MELVIN HELIT

IBLA 95-258, 97-125 Decided June 3, 1998

Appeals from decisions of the California State Office, Bureau of Land Management, rejecting association placer mining claim certificates of location filed for recordation. CAMC 264852 and CAMC 264888.

Affirmed.

1. Mining Claims: Location--Mining Claims: Placer Claims--Mining Claims: Recordation of Certificate or Notice of Location

   Placer mining claim locations are limited by law to 20 acres for each individual claimant or up to 160 acres for an association of eight persons. A decision rejecting a notice of location for a placer mining claim which describes lands greatly in excess of the statutory limit will be affirmed where the claimant has been given an opportunity to identify the lands within the statutory limit which are included in the mining claim location and has declined to do so.

2. Mining Claims: Location--Mining Claims: Placer Claims--Mining Claims: Recordation of Certificate or Notice of Location

   The inadvertent inclusion of excess acreage in a placer mining claim location notice will not invalidate the claim when the claimants were not given notice of the excess and an opportunity to redraw the boundaries to comply with the law. A notice of location for a placer mining claim containing acreage greatly in excess of the statutory limit is properly rejected for recordation and the claim declared null and void when the claimant has been given an opportunity to alter the description of the located lands to conform to the acreage limit and declined to do so.

APPEARANCES: Melvin Helit, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Melvin Helit has brought separate appeals from two Decisions dated February 6, 1995 (appeal docketed as IBLA 95-258), and November 7, 1996 (appeal docketed as IBLA 97-125), by the California State Office, Bureau of Land Management (BLM). The Decisions rejected Helit's mining claim recordation filings for the association placer mining claims identified as SB-ABLE #7-8-9-10-11-12-13-14 (CAMC 264852) and SB-ABLE #8-9-10-11-12-13-14-15 (CAMC 265888), respectively, which Helit located within many designated secs. in Ts. 2 and 3 N., R. 19 E., Ts. 1, 2, and 3 N., R. 20 E., and Ts. 1 and 2 N., R. 21 E., San Bernardino Meridian, California. We have consolidated these appeals sua sponte because the cases involve a similar factual context and raise the same legal issues.

On December 22, 1994, Helit filed with BLM a Placer Mining Claim Location Notice on behalf of himself and seven other locators for an association placer claim, the SB-ABLE #7-8-9-10-11-12-13-14 (CAMC 264852), located on October 14, 1994. The location notice purports to claim 160 acres situated in:

> Sec. 15 NE, Sec. 14 NW, Sec. 10, Sec. 11, Sec. 3, Sec. 2, in T1N R20E SBM. AND Sec. 34, Sec. 35, Sec. 27, Sec. 26, Sec. 22, Sec. 23, Sec. 15, Sec. 14, Sec. 10, Sec. 11, Sec. 3, Sec. 4, Sec. 5, Sec. 6, in T2N R20E SBM. AND Sec. 31, Sec. 32, Sec. 33, Sec. 29, Sec. 30, in T3N R20E SBM. AND Sec. 36, Sec. 25, in T3N R19E SBM.

The location notice was accompanied by a small scale map showing the townships involved and numbered sections within those townships. The location notice not only gives no metes and bounds description of the boundaries of the claim by course and distance, it contains no description of any kind delineating the lands constituting the 160-acre claim. Claimants assert in the location notice a right to include an area greater than that allowed by law, citing Zimmerman v. Funchion, 161 F. 859 (9th Cir. 1908), among other precedents.

In its February 6, 1995, Decision, BLM rejected the attempted recordation of the claim (CAMC 264852) on the basis that claimants had not properly located a placer claim since they listed substantially more than the 160 acres allowed by law for an association placer claim. Although, in essence, BLM found the claim null and void ab initio, the effect of BLM's rejection of the recordation filing was to hold the claim abandoned and void for failure to record a notice of location as required by 43 C.F.R. § 3333.1-2(a). 43 C.F.R. § 3833.4(a)(2). Helit's appeal of this BLM Decision has been docketed as IBLA 95-258.

On December 30, 1994, Helit filed another Placer Mining Claim Location Notice with BLM for an association placer claim, CAMC 264888, identified as the SB-ABLE #8-9-10-11-12-13-14-15. This location notice resembles the earlier notice in that it describes vast acreage in seven different townships. As with the other claim, the filing was accompanied by a small scale map

showing the townships involved and numbered sections within those townships. While purportedly claiming 160 acres, the location notice fails to identify the lands embraced in the claim either by metes and bounds or otherwise.

On May 14, 1996, BLM sent Helit a certified letter stating:

> We have been unable to accomplish the recordation of the SB-ABLE #8-9-10-11-12-13-14-15 placer mining claim (CAMC 265888 [sic.]). The legal description on the location notice does not describe the location down to the quarter-section of each section nor does the map show where the claim is located. Therefore, the exact location of this claim can not be determined.

The BLM letter granted Helit 30 days from receipt to provide "an amended location notice describing the location of the claim down to the quarter-section of each section." On June 17, 1996, Helit filed a document styled "Amended Placer Mining Claim Location Notice," which provided no additional substantive information pertaining to the location of the claim.

On July 25, 1996, BLM issued a second letter enclosing master title plats for the townships identified in the location notice and granting Helit an additional 30 days within which to describe the location of the claim. Helit responded with a letter asserting that the material he had previously submitted was sufficient to locate the claim, referencing the map upon which were sketched-in the townships and sections.

On November 7, 1996, BLM issued a Decision rejecting Helit's location notice for CAMC 264888, on the basis that "[t]he location notice did not contain the quarter-sections in which the claim is located and the map the claimants submitted did not show the location of the mining claim as required by the regulations at 43 C.F.R. § 3833.1-2(b)(5)(i and ii)" and 43 C.F.R. § 3833.4(b). Hence, BLM held the claim to be abandoned by operation of law. Helit's appeal of this Decision has been docketed as IBLA 97-125.

Helit has submitted identical Statements of Reasons (SOR's) for each appeal. In the SOR's, Helit maintains that claimants are not claiming over 160 acres per claim, but that they are claiming up to 160 acres of land somewhere within the sections and townships identified in the location notices. Appellant asserts that discovery has been made in the sections and townships enumerated, noting that about 25 placer mining claims had been previously located by him in the area. Appellant contends that placer claims need not conform to the public land survey. Finally, Appellant argues that if the claims involve excess acreage, BLM failed to allow him "reasonable time to select the ground to which he is entitled."

[1] The statutory authority for location of placer mining claims upon the public lands expressly limits the quantity of acreage within such locations to 20 acres for each individual claimant or up to 160 acres for an association of eight persons. 30 U.S.C. §§ 35, 36 (1994); 43 C.F.R.

§ 3842.1-2; see Alumina Development Corporation of Utah, 77 IBLA 366, 368-69 (1983). In this case, the record reveals that there were eight association members per claim; thus, each of the placer claims could contain up to 160 acres. Appellant's mining claims identify lands totalling approximately 16,290 acres for CAMC 264852 and 27,520 acres for CAMC 264888. 1/ Notwithstanding Appellant's contention that the claims were only located for 160 acres within this enormous acreage, no effort was made to describe an area of 160 acres upon which the claims were located. Federal mining law mandates generally that a mining claim location be distinctly marked on the ground so that its boundaries can be readily traced and that location notices include "such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim." 30 U.S.C. § 28 (1994). 2/ Regulations implementing the mining claim recordation provisions of section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1994), require that the copy of the location notice filed with BLM show the location of the claim to within a quarter section and include a map setting forth the boundaries and position of the claim with such accuracy as will permit location of the claim on the ground. 43 C.F.R. § 3833.1-2. No description of the lands for which the claims are located is provided other than the descriptions of vastly excessive acreage noted above. As noted above, BLM wrote to Appellant on two separate occasions requesting a description of the lands embraced in the 160-acre claims prior to rejection of the claims. Appellant provided no further description of the lands within the claims as located.

[2] We recognize that the inadvertent inclusion in a placer mining location of slightly more than 160 acres when initially located does not, itself, invalidate the claim. Thus, the "unintentional inclusion of a trifle more than twenty acres in the [placer mining claim] as originally located was an irregularity which did not vitiate the location, but merely made it necessary that the excess be excluded when it became known." Waskey v. Hammer, 223 U.S. 85, 90 (1912). Similarly, it has been held that excess acreage (1.7 acres) inadvertently and in good faith described in the boundaries of a placer claim does not render the entire claim void, but rather the claim was void only as to the excess when the locators were not given notice of the excess acreage and an opportunity to redraw the boundaries so as to comply with the law. Zimmerman v. Funchion, 161 F. at 860. The case before us does not involve an inadvertent inclusion of acreage slightly in excess of the statutory limit. The location notices on appeal described acreage many times in excess of the statutory limit and, when given the

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1/ Reference to the master title plats for the townships discloses that the lands have not been surveyed as a part of the public land survey and the acreage has been projected on the basis of protraction diagrams.

2/ When placer claims are located on land which has been previously surveyed under the public land surveys and claim boundaries are conformed to the legal subdivisions of that survey, it has been held that there is no need to monument the claim corners. See, e.g., Hagerman v. Thompson, 235 P.2d 750, 757 (Wyo. 1951).

opportunity, Appellant declined to describe the 160 acres located in the claims. Under the circumstances, the excess acreage in the placer claim locations was neither inadvertent nor unintentional. Accordingly, the claims were properly declared null and void and location notices filed for recordation were properly rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decisions appealed from are affirmed.

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C. Randall Grant, Jr.
Administrative Judge

I concur:

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James L. Burski
Administrative Judge